

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

-against-

STEVEN DONZIGER,

Defendant.

No. 19-CR-561 (LAP)

No. 11-CV-691 (LAK)

ORDER

LORETTA A. PRESKA, Senior United States District Judge:

Before the Court is Defendant Steven Donziger's request to adjourn the trial date in this matter, now January 19, 2021, to May 10, 2021--a request to which the Government did not object.¹ For the reasons below, the request to adjourn is GRANTED, albeit reluctantly.

The history of this matter is as follows. Mr. Donziger made his initial appearance on the Court's July 31, 2019 Order to Show Cause on August 6, 2019. (See dkt. no. 3.) At that

¹ (See dkt. no. 240.) Specifically, Mr. Donziger "object[ed] to conducting the trial remotely." (Id. at 1.) The Government confirmed that it was "ready to proceed to trial and prepared to begin on January 19" but that it "ha[d] no objection to an adjournment." (Id.)

The parties' letter responded to the Court's January 5, 2021 order regarding a recent standing order issued by Chief Judge McMahon. (See dkt. no. 239.) That standing order adjourned all jury trials in the Southern District of New York until February 12, 2021. See In re Coronavirus/COVID 19 Pandemic, M-10-468 (CM) (S.D.N.Y. Jan. 5, 2021) (slip op. at 1). Although the order did not adjourn all bench trials, it did state that "bench trials . . . should be conducted remotely if at all possible." (Id. at 1.)

hearing, the Government--based on the recommendation by the Pretrial Services ("PTS") officer--advocated for several conditions of release, including, most notably, home confinement and location monitoring. (See dkt. no. 18 at 13:13-14:2.) Mr. Donziger opposed those conditions. (See id. at 14:25-16:24, 17:8-20:10.)

The Court released Mr. Donziger subject to several conditions, including supervision by PTS subject to home confinement and with location monitoring. (See dkt. no. 4 at 4-5.) The Court ordered home confinement after finding Mr. Donziger to be a flight risk, citing, inter alia, (1) the fact that Mr. Donziger faced a possibility of a term of imprisonment, (2) the "weight of the evidence" against him, (3) his "past refusal to comply with orders of the court," and (4) his "frequent travel to Ecuador which . . . has less than a reliable system for extradition." (Dkt. no. 18 at 27:6-13.)

One would have thought that that circumstance would have motivated Mr. Donziger vigorously to seek an early trial date. However, since Mr. Donziger's initial appearance, the following events have occurred:

- On November 4, 2019, Mr. Donziger (who remained in home confinement) moved to eliminate the conditions of home confinement. (See dkt. no. 30.)
- On November 25, 2019, the Court held oral argument on the motion, denying Mr. Donziger's request after finding that he remained a flight risk. (See dkt. no. 44 at 13:1-3.)

- On December 3, 2019, Mr. Donziger (who remained in home confinement) moved for reconsideration of the Court's decision. (See dkt. no. 39.)
- On December 4, 2019, the Court held a status conference. (See dkt. no. 42.) At that conference, the Court heard argument from Mr. Donziger regarding his motion for reconsideration. (See id. at 3:7-6:20.) The Court also set the case for trial on June 15, 2010.
- On December 17, 2019, Mr. Donziger (who remained in home confinement) withdrew his request for reconsideration. (See dkt. no. 47.)
- On May 18, 2020, at a pretrial conference, Mr. Donziger (who remained in home confinement) again requested to eliminate the condition of home confinement. (See dkt. no. 87 at 9:12-13.) The Court denied that request, finding that Mr. Donziger remained a flight risk. (Id. at 13:8-10.) The Court also adjourned the June 15 trial date to September 9, 2020, following the onset of the pandemic.
- Leading up to the September 9 trial date, Mr. Donziger (who remained in home confinement) requested to adjourn or continue the trial at least three times. (See dkt. no. 111 (July 29); dkt. no. 130 (August 21); dkt. no. 158 (August 27).).
- On September 4, 2020, the Court adjourned the trial date to November 3, 2020. (See dkt. no. 168.) The Court adjourned the trial by one additional day on September 16, 2020. (See dkt. no. 172.)
- Leading up to November 4, Mr. Donziger (who remained in home confinement) requested to adjourn or continue the trial at least three times. (See dkt. no. 180 (October 18); dkt. no. 187 (October 22); dkt. no. 194 (October 27).)
- On October 28, 2020, the Court adjourned the trial date to November 9, 2020. (See dkt. no. 196.)
- Leading up to that new trial date, Mr. Donziger (who remained in home confinement) requested to adjourn at least three additional times. (See dkt. no. 200-1 (November 4); dkt. no. 204 (November 6); dkt. no. 207 (November 6).) In one of those requests, Mr. Ronald Kuby, a newly appearing lawyer for Mr. Donziger, indicated that he would accompany

Mr. Donziger to court on November 9 to request permission "to discuss scheduling an adjourn date." (Dkt. no. 204.)

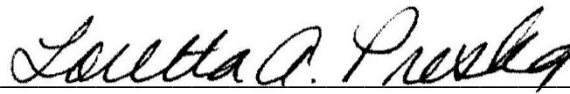
- On November 6, 2020, the Court issued an order informing Mr. Kuby that he "[w]as always free to confer with the Prosecutors and report the outcome." (Dkt. no. 206.) Later that day, the Government filed a letter stating that it was "ready for trial on Monday, November 9" but that it "consent[ed] to the defense request for an adjournment." (Dkt. no. 208.)
- On November 7, 2020, on agreement of the parties, the Court granted Mr. Donziger's motion and adjourned the trial to January 19, 2021. (See dkt. no 209.)
- On December 17, 2020, Mr. Donziger (who remained in home confinement) again moved to discontinue the condition of home confinement. (See dkt. no. 227.) The Court denied that request on December 31, 2020. (See dkt. no. 237.)

Now before the Court is Mr. Donziger's current request (to which the Government does not object) to adjourn the trial date to May 10, 2021, some 643 days from Mr. Donziger's initial appearance and that same number of days since Mr. Donziger began his home confinement. As stated above, Mr. Donziger has repeatedly requested adjournments of the trial date throughout his now more than 500 days of home confinement. In light of this history, but cognizant of the fact that it is both Mr. Donziger (who remains in home confinement) and the Government who seek yet another adjournment of the trial date--this time for another 111 days, no less--the Court reluctantly GRANTS the request of Mr. Donziger and the Government to adjourn the trial date from January 19, 2021 to May 10, 2021. (See dkt. no. 240.)

Out of an excess of caution, time until the adjourned trial date of May 10 is excluded from calculation under the Speedy Trial Act in the interests of justice based on Mr. Donziger's request for an adjournment.

SO ORDERED.

Dated: January 10, 2021
New York, New York

A handwritten signature in black ink, reading "Loretta A. Preska", written over a horizontal line.

LORETTA A. PRESKA
Senior United States District Judge